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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1143.

JAMES GIBBONS, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 19, 1885.

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INDEX.

	Original.	Print.
Original bill	1	1
Subpœna and return	12	5
Answer	13	5
Exhibit A—Items of sale, &c., 1875	20	7
B— " 1876	21	8
C— " 1877	22	8
D— " 1878	23	9
E— " 1879	24	9
F— " 1880	25	10
Replication	26	11
Evidence for complainant	27	11
Testimony of J. A. Walter	28	11
Stipulation as to admission of deed	40	16
Complainant's Exhibit "A"—Deed from Anthony Caffray, D. D., to John Carroll, Bishop of Baltimore, Sept. 4, 1804	41	16
Order for hearing in General Term	44	18
Decree	45	18
Bond	46	18
Certificate to record	48	19

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Original Bill. Filed Jan'y 9, 1883.*

In the Supreme Court of the District of Columbia.

JAMES GIBBONS, Complainant,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } 8417. Equity Docket 22.

To the honorable the supreme court of the District of Columbia, holding special term as a court of equity, the complaint-, James Gibbons, shows as follows:

1st. That he is the Roman Catholic archbishop of the diocese of Baltimore, of which the District of Columbia is a part; that he is a resident of said city of Baltimore, and sues in respect to property rights acquired as archbishop of Baltimore, as will hereafter more fully appear, and that the defendant is a body corporate, duly incorporated by act of Congress, and is sued as such.

2nd. That the complainant, as archbishop of Baltimore, is seized and possessed of certain real estate and property situate and being in the city of Washington, District of Columbia, known and
2 designated upon the plat, a plan of said city, as lots numbered from thirty-six (36) to forty-six (46), inclusive, of the Rev. J. A. Walter's and James Gibbons' recorded subdivision of lots in square numbered three hundred and seventy-six (376), & recorded in liber 10, folio 156, of the records in the office of the surveyor for the District of Columbia.

3rd. That the said described lots and parcels of ground are now held by this complainant, and have, since the year 1804, been held by complainant's predecessors in the office of archbishop of Baltimore, in trust for the uses and purposes of St. Patrick's church of Washington, District of Columbia.

4th. That from the commencement of said holding until about the year 1870 the said lots were occupied by "Old St. Patrick's church" and pastoral residence; that during said year 1870 the said church building, &c., was found to be unsafe and dangerous, and taken down and removed; that since said time religious services have been held for the congregation of St. Patrick's church,
3 pending the completion of a new church edifice now in process of erection, in "Carroll Hall," a building located on adjacent lots in the same square, belonging also to this complainant, and used, as aforesaid, for church purposes.

5th. That after the old church building was removed therefrom, as aforesaid, in 1870, the said lots, to wit, lots numbered from thirty-six (36) to forty-six (46), in square three hundred and seventy-six (376), were inclosed as a yard attached to said Carroll Hall, and occupied and used in connection therewith for church and school purposes until 1880, during which period this complainant derived no revenue or profit whatever from said lots, or any of them, and was, by reason of the terms of the trust by which said property was held, unable to sell or dispose of the same, or to occupy it for or apply it to any other use than that of a site for a church building.

6th. That in the year 1881, by a decree of this honorable court

passed on the 23d day of February of said year, in the suit of James Gibbons (this complainant) *vs.* Callan *et al.*, equity, No. 7576,
4 the said lots were relieved from the operations of said trust, and this complainant empowed to sell or otherwise dispose of said lots, and directed to apply the proceeds or profits therefrom derived to the completion of the new church building now in process of erection as aforesaid.

7th. That while believing that by the application of the rents and profits of said leasing to church purposes the said lots are still entitled to an exemption from taxation under the provisions of the act of Congress, approved June 17, 1870, exempting from all assessments and taxes all property in the District of Columbia appurtenant to churches and schools and used in connection therewith, this complainant, however, makes no claim for exemption thereon since said year 1881, or on any property by him held which is a source of profit and gain, and he has caused the taxes on said lots to be promptly paid since the said date of their leasing.

8th. That from said year 1804 the said lots had never been
5 assessed for taxes or held subject thereto, and the complainant's right to an exemption from taxes thereon was never, to this complainant's knowledge, questioned by the said defendant, the District of Columbia, until some time in the latter part of 1879 or first of 1880, when the representative and agent of this complainant, the Rev. J. A. Walter, pastor of St. Patrick's church since 1860, was for the first time notified by the said District of Columbia that the said lots were subject to taxation; that they had been subject to taxation since the tax year ending June 30, 1875, and that for the taxes assessed thereon since said 1875 the said lots had been annually sold and bought in at said sale by the District of Columbia.

9th. That on examination it was found that the records of the office of the assessor of taxes for the District of Columbia show that said lots were not assessed for taxes from said year 1804 to said year 1875, inclusive, and were marked upon said books as church property and exempt from taxes, and that since said year 1875 they
6 have been assessed for taxes, and are marked upon said books as taxable property.

10th. That this complainant then, through the said J. A. Walter, pastor of St. Patrick's church as aforesaid, informed the Commissioners of the District of Columbia that said lots were in no wise a source of revenue or profit to this complainant, but were still held for church purposes; that they were adjacent to St. Patrick's church (Carroll Hall), and used in connection therewith, and were therefore, as this complainant was advised and believed, exempt by law from taxation; that he called their attention to the fact that during said period, from 1875 until the said latter part of 1879 or first of 1880 (the time of said notice to this complainant that said lots were and had been since 1875 subject to taxation), the condition and status of said lots, and the purposes for which they were used, in all respects, were the same as during the time from 1870 until 1875, when they were held to be exempt from taxes, and urged that the notice that said lots were taxable, given by said District of Co-

lumbia to this complainant in 1879 or 1880 as aforesaid,
7 should have been given in 1875, when it was first decided to assess the same for taxes.

11th. But that the said Commissioners of the District of Columbia, while admitting the legality of the exemption of said lots from taxes prior to said year 1875, and notwithstanding the fact that the status of said lots remained unchanged, and the law applicable to exemptions had not been repealed or modified, held that since said year 1875 they (the said lots) had ceased to be of the class of property by law exempted from taxation, and refused to relieve the same from the assessments and taxes thereon levied as aforesaid.

12th. That the said taxes and assessments legally levied, as aforesaid, since 1875, and prior to 1881, with the interest and penalties, and tax-lien certificates, still remain upon the books of the assessor of the said District of Columbia as an apparent charge and lien upon said lots, which, as before stated, have during said period been annually sold for taxes and bought in at said sales by the
8 District of Columbia, as this complainant is informed and believes, and that said taxes, &c., are a cloud upon the title of said lots and interferes with his disposal thereof; that such illegality does not appear from any record, but from facts and circumstances extraneous to any record.

13th. That the taxes assessed on said lots from 1875 until 1880, the years for which an exemption is claimed by this complainant, are as follows:

For year ending June 30, 1876	$752 96
" " " " 1877	752 96
" " " " 1878	759 72
" " " " 1879	799 38
" " " " 1880	772 37
Total	$3,837 39

And that said sum of $3,837.39 includes costs of tax sales, but not the interest and penalties on the several assessments which bear interest from June 30 of the year for which they were assessed at the rate of ten per cent. per annum.

14th. That this complainant is advised and believes, and therefore claims, that the aforesaid lots were by law exempt from
9 all assessments and taxes prior to the — 1881, when by the decree passed by the hon. court in the cause of Gibbons *vs.* Callan *et al.*, hereinbefore referred to, and which this complainant prays may be taken as a part hereof, the said lots, relieved from the operations of the trust under which they had been held, became, by the aforesaid leasing, a source of profit and gain, and ceased to be used directly for church purposes.

Wherefore, in consideration of the foregoing, this complainant prays as follows:

1st. That the said "The District of Columbia" be made a party defendant hereto, served with the process of subpœna, and required to appear and answer the exigencies of this bill of complainant.

2nd. That the aforesaid lots, to wit, lots numbered from thirty-six (36) to forty-six (46), inclusive, in square numbered three hundred and seventy-six (376), may, by a decree of this hon. court, be declared to have been exempt by law from all assessments and taxes thereon levied prior to said year 1881; that all assessments and taxes made and levied thereon, and all sales thereof for taxes, and all tax-lien certificates issued against said lots prior to said year 1881, be declared void and of no effect, and ordered to be annulled, cancelled, and set aside.

3rd. That the said defendant, The District of Columbia, may be enjoined from collecting said taxes, or any part thereof, levied upon said lots, or any of them, prior to said year 1881.

And for such other and further relief in the premises as the nature of the case may seem to require.

JAMES GIBBONS,
Archbishop of Baltimore.

I do solemnly swear that I have read the bill of complaint by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, *and that the facts therein stated upon my personal knowledge are true*, and that the facts therein stated upon information and belief I believe to be true.

JAMES GIBBONS,
Archbishop of Baltimore.

MERRICK & MORRIS AND
G. E. HAMILTON,
Solicitors for Complainant.

Subscribed and sworn to before me, this fifth day of January, 1883.

GEO. McCAFFRAY.

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that George McCaffray, Esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn and, authorized by law to administer oaths and take acknowledgements, I further certify that I am acquainted with the handwriting of the said justice and verily believe the signature to be his genuine signature.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city, this 5th day of January, A. D. 1883.

[L. S.]

RICHARD T. ALLISON,
Clerk of the Superior Court of Baltimore City.

12 *Subpœna to Answer.*

In the Supreme Court of the District of Columbia. Jan'y 9th, 1883.

JAMES GIBBONS, Complainant,
against
DISTRICT OF COLUMBIA, Defendant. } No. 8417. Equity Docket.

The President of the United States to the District of Columbia, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER,
Chief Justice.
R. J. MEIGS,
Clerk, &c.
By R. J. MEIGS, JR.,
Ass't Clerk.

Return on Subpœna to Answer.

Served J. R. West, Commissioner, Jan. 11th, 1883.

CLAYTON McMICHAEL,
U. S. Marshal.

13 *Answer of Defendant. Filed Mar. 3, 1883.*

In the Supreme Court of the District of Columbia. In Eq.

JAMES GIBBONS, Complainant,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } No. 8417.

Answer of the District of Columbia to the bill of complaint herein filed.

This defendant, in answer to so much of said bill of complaint as it is advised it is necessary and material for it to answer, says:

1. It admits the allegations of the first paragraph of the bill of complaint.

2 and 3. In answer to the allegations of the second and third paragraphs of said bill it says that it has no knowledge in respect to the matters and things therein set out, and, if the same be deemed pertinent and material to the issues herein, requires strict proof thereof.

14 4. It admits the allegations of the fourth paragraph of the bill of complaint.

5. In answer to the allegations of the fifth paragraph of said bill it says it denies that the property mentioned in the bill of complaint is appurtenant to or used in connection with any school or church property belonging to the complainant.

6. It admits the allegations of the sixth paragraph of the bill of complaint.

7. It admits that the complainant paid the taxes justly due on said property since the year 1881.

8. In answer to the allegations of the eighth paragraph of said bill this defendant says that under the act of Congress approved June 20, 1874, all church property, including the property claimed to be exempt in said bill in said District of Columbia, was
15 subject to taxation; that, pursuant to said law, said property was duly listed for taxation and a tax duly levied and assessed thereon; that said tax not being duly paid said property was duly sold to satisfy the defendant's lien for taxes thereon; that under the acts of Congress of March 3d, 1875, July 12th, 1876, and March 3d, 1877, said property so listed as aforesaid was duly and legally taxed according to the respective provisions of the said acts; that said taxes not being paid at the times the same became due the said property was duly advertised and sold, for default in payment of said taxes, to satisfy the District's claim.

This defendant, further answering, says that there is not now, and was not at the time of the levying of the respective taxes herein mentioned, any law in force in the District of Columbia requiring notice to be given to owners of property that the same had been listed for taxes and duly assessed for its proportion of the
16 same, but says that in default in payment of the said taxes the said property was duly advertised and sold.

Further answering, this defendant says that the records of the District of Columbia were and are, under the law, public records of the District, open to the inspection of the public.

9. It admits the allegations of the ninth paragraph of the said bill of complaint.

10. This defendant admits that it received a communication from the Rev. J. A. Walter of the purport mentioned in the tenth paragraph.

11. In answer to the allegations of the eleventh paragraph of the said bill the defendant says it denies the same as set forth, and if the same should be deemed pertinent and material to the issues herein demands strict proof thereof.

12. The defendant, in answer to the allegations of the
17 twelfth paragraph of the said bill, says that it denies the illegality of the taxes so levied on said property, and says that the same were duly levied and assessed and constitute a valid and extsting lien upon and against said property.

13. In answer to the allegations of the thirteenth paragraph of said bill of complaint the defendant says that the records of the District of Columbia show that the total amount of taxes due by the complainant on the property mentioned in said bill, including all proper and legal penalties and costs, is as follows:

Am't sold for taxes June 29th, 1875			$1,542 69
"	"	" 13th, 1876	755 67
"	"	August 14th, 1877	753 03
"	"	August 13th, 1878	758 48
"	"	November 25th, 1879	799 13
"	"	October 1st, 1880	772 13

As appears by the exhibits filed herewith, and marked def't's
18 Exhibits A, B, C, D, E, and F, respectively, and prayed to be taken as a part hereof, which said several sums as taxes, &c., for the respective years herein mentioned, by law, bear interest at the rate of ten per cent. per annum from the time of sale of the property as herein recited until the date of redemption of the same by payment.

The defendant further says that in case the court on hearing shall decided that the complainant is not entitled to any restraining order or injunction to restrain or enjoin the defendant from taking further or other steps to collect the taxes so due as aforesaid, that the court may decree that the complainant pay the full amount of the taxes so due as aforesaid, with interest at ten per cent. to date, and in default in payment thereof the defendant may have execution therefor.

14. In answer to the allegations of the fourteenth paragraph of the complainant's said bill the defendant denies that the said
19 property of the complainant was exempt from taxes as therein claimed, but, on the contrary, avers that the same was liable to taxation, as hereinbefore set forth.

And now having fully answered this defendant prays that it may be hence dismissed with its reasonable costs in this behalf sustained.

[L. S.] By A. G. RIDDLE,
Its Attorney.

20 *Exhibits to Answer. Filed March* 3, 1883.

1875.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1875	$1,428 42
To penalty	114 27
To advertising, 1875, } Not ad.	
To auctioneer's fees, }	
Amount sold for	$1,542 69

1875 tax-book, page 429; lot- 5, 6, 7, 8, square No. 376.

To amount sold for taxes June 29, 1875, assessed in name of St. Patrick's church	$1,542 69

Interest at the rate of ten per cent. per annum from day of sale to date of redemption.

Amount required to redeem ---------- $

Received payment, ——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. A.—E'w'rd G.

GIBBONS *vs.* D. C. } 8417. In Eq.

21 1876.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1876	$675 87
To penalty	74 35
To advertising, 1876	4 95
To auctioneer's fee	50
Amount sold for	$755 67

1876 tax-book, page 122, sub-lot 25 to 35, square No. 376.

To amount sold for taxes June 13, 1876, assessed in name of St. Patrick's church ---------- 755 67

Interest at the rate of ten per cent. per annum from day of sale to date of redemption.

Amount required to redeem ---------- $

Received payment.
——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. B.—E'w'rd G.

GIBBONS *vs.* D. C. } 8417. In Eq.

22 1877.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1877	$675 87
To penalty	74 35
To advertising, 1877	2 31
To auctioneer's fee	50
Amount sold for	$753 03

1877 tax-book, page 127, sub-lot 25 to 35, square No. 376.

To amount sold for taxes August 14, 1877, assessed in name of St. Patrick's church	$753 03
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. C.—E'w'rd G.

GIBBONS *vs.* D. C. } 8417. In Eq.

23 1878.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1878	$675 87
To penalty	80 11
To advertising, 1878	2 00
To auctioneer's fee	50
Amount sold for	$758 48

1878 tax-book, page 137, sub-lots 25 to 35, square No. 376.

To amount sold for taxes August 13, 1878, assessed in name of St. Patrick's church	$758 48
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. D.—E'w'rd G.

GIBBONS *vs.* D. C. } 8417. In Eq.

24 1879.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1879	$675 11

To penalty	121 52
To advertising, 1879	2 00
To auctioneer's fee	50
Amount sold for	$799 13

1879 tax-book, page 147, sub-lot- 25 to 35, square No. 376.

To amount sold for taxes November 25, 1879, assessed in name of St. Patrick's church	$799 13
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. E.—E'w'rd G.

GIBBONS *vs.* D. C. } 8417. In Eq.

25 1880.

DISTRICT OF COLUMBIA, *March* 2, 1883.

Items of sale.

To all of tax for year ending June 30, 1880	$675 11
To penalty	94 52
To advertising, 1880	2 00
To auctioneer's fee	50
Amount sold for	$772 13

1880 tax-book, page 409, sub-lot- 25 to 35, square No. 376.

To amount sold for taxes October 1, 1880, assessed in name of St. Patrick's church	$772 13
Interest at the rate of ten per cent. per annum from day of sale to date of redemption	
Amount required to redeem	$

Received payment,

——— ———, *Collector*,
By ——— ———.

DEF'T'S EX. F.—E'w'rd G.

GIBBONS *vs.* D. C. } No. 8417. In Eq.

26 *Replication. Filed March* 10, 1883.

In the Supreme Court of the District of Columbia.

JAMES GIBBONS *vs.* THE DISTRICT OF COLUMBIA. } Eq. Doc. No. 22. Cause No. 8417.

For replication to answer, the complainant hereby joins issue with the defendant.

MERRICK & MORRIS AND
G. E. HAMILTON,
For Complainant.

27 *Deposition — behalf — Complainant. Filed Jan'y* 8, 1884.

In the Supreme Court of the District of Columbia. In Equity.

JAMES GIBBONS, Complainant, *vs.* THE DISTRICT OF COLUMBIA, Defendant. } No. 8417. Docket No. 22.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

Be it remembered that at an examination of the hereinafter-named witness, J. A. Walter, begun and held on Friday, the 21st day of December, 1883, when the within deposition was taken, I, Edwin Forrest, an examiner in chancery, did cause to be personally present at the office of Albert G. Riddle, No. 460 Louis-ana avenue N. W., in the city of Washington, District of Columbia, the said witness, J. A. Walter, produced on behalf of the complainant, who, being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, touching the matters at issue in the above-
28 entitled cause, on examination deposed as follows:

Direct examination by G. E. HAMILTON:

Question. State your residence and calling.

Answer. I reside at the corner of G street and Tenth street N.W., in this city, No. 619; I am pastor of St. Patrick's church.

Q. How long have you been pastor?

A. Since April, 1860; I think it was about the 14th of April; it was April, 1860, anyhow.

Q. State how the real estate occupied and used in connection with St. Patrick's church is held; and in whom is it vested?

A. The archbishop.

Q. How is the property described in these proceedings held?

A. By the archbishop.

Q. As pastor of St. Patrick's church you have the management

and direction of the property used and occupied in connection with St. Patrick's church?

A. Yes, sir; more or less; I cannot say precisely when, but I was appointed by Archbishop Kendrick as his agent and attorney when I first came to Washington, independent of my position as
29 pastor, and I have always had charge of the property, directing everything.

Q. State, as briefly as possible, how the property referred to in these proceedings has been occupied and used since the commencement of your pastorate down to the present date?

A. The property has been used for church purposes; the F-street property was all one lot, inclosed with an iron railing, and was always looked upon simply as belonging to the church—church property; we never received any emolument from the property until it was leased.

Q. When you first became pastor of the church, how was the F-street property occupied?

A. The three lots, Nos. 5, 6, and 7 (original lots) were occupied by St. Patrick's church, and the other lot, 8, was occupied as the pastoral residence.

Q. When was the old St. Patrick's church taken down?

A. I think I put it down here (witness referring to a slip of paper in his possession) that I might have the dates; the old church was removed in 1872; at least, in January, 1872, my books show
30 that I paid for the removal; it was paid for about the time I employed the mechanics, as I generally like to pay for work as soon as it is done; we removed from the old church in 1870; still, the old church stood there after that time.

Q. After the taking down of the old church, and until 1875, how was the property used?

A. Just the same; for church purposes.

Q. How from 1875 to 1879?

A. Just the same.

Q. Was there any difference in its use from 1875 to 1879 than from 1870 to 1875?

A. No difference at all.

Q. How is that property at present used?

The WITNESS: The F-street property?

COUNSEL: Yes.

A. It is leased to certain parties for 25 years; Mr. Holtzman has the corner lot, and then there are various other parties who have the other lots on a lease for 25 years.

Q. When did those leases begin?

A. Mr. Holtzman's lease began, I think, in 1880; I have here (referring to a slip in his possession), 1880, June 11, removal of railing; that was the time when it ceased to be church property.
31 I considered it then as being no longer church property, and the other parties, I think, leased about a year afterwards; I wish I had brought my ledger along; I could have verified it.

Q. When you moved from the old church where did you go to; where did your congregation hold service?

A. Carroll Hall, on G street.

Q. How is this property situated in reference to Carroll Hall?

A. This property is right in the rear of it, adjoining the new church property.

Q. Speaking of removing a railing, was it inclosed with Carroll Hall?

A. It was inclosed all the way round; on the F-street front way up to my house; and that railing was removed June 11, 1880; at least, I paid for it on that day.

Q. Have you paid taxes on this property?

A. Yes.

Q. Since when?

A. From November, 1880; November 26, 1880, $1,207.47, I paid for two years taxes; at that time, considering the property no longer church property, I thought it was bound to pay taxes.

32 Mr. RIDDLE: You have paid taxes for it since you leased it?

A. Yes, sir; since we leased it the taxes have been paid.

Q. Mr. HAMILTON: When were you first called upon or notified to pay taxes?

A. I think once they sent me bills; I do not know the date; but they sent me bills for special improvement taxes, and I went to Mr. Merrick about the matter, and he said that there was no special improvement taxes to pay, and I did not bother with it after that.

Q. How about the general taxes?

A. I think in 1878 or 1879, I do not remember which, but I know I went down to the City Hall, and I said to Mr. Cook, "Why do you send these bills; this is church property?" "I know that" he said, "but we are told to send the bills." I paid no more attention to it after that, because I did not consider that I was bound to pay the taxes, and especially, when the collector told me that; I did not think then that I was under any obligations at all.

33 Q. To what is the revenue derived from these lots applied?

A. To the church—building of the new church.

Q. Necessarily so applied?

A. Yes, sir; the archbishop can use it for no other purpose. I will state that Father Matthews left property also in the same condition; it was for the same purpose, for the congregation of St. Patrick's church. The archbishop left all the property in trust for that purpose; we only got a fee-simple in 1880, or (addressing Mr. Hamilton) 1881; was it—you know?

Mr. HAMILTON: 1881.

WITNESS: 1881.

Q. What do you mean by getting a fee-simple title?

A. The three church lots left by Mr. McCatheray were left in trust in 1804 for the use of the congregation worshiping at St. Patrick's church for their use; I forget the law term, but that was what it was for; I wanted to raise money for the new church, and it was necessary that I should get a fee title; then there was an amicable

34 suit brought against the archbishop, and he gave bond in $10,000, and the court gave him a fee-simple title under the condition that he was to use whatever revenues came from the property for the congregation.

Cross-examination by A. G. RIDDLE:

Q. When you say that this property was used for the church—St. Patrick's church—you mean that it was vacant property and included in the same inclosure?

A. Yes, sir.

Q. Well, was there any special use made of the property except that the church stood upon it, and it was surrounded in that way?

A. No other use at that time.

Q. Since the title has been placed in position, or the trust, so that it could be made available to lease for secular uses, it has been leased?

A. Yes, sir.

Q. So that it was not necessary for the enjoyment of the church that it should remain vacant?

A. No, sir; I will explain one thing in regard to that;
35 there was a dispute in the congregation about it for a long time, and we did not know what we were going to do, how we were to dispose of it; a large number of the congregation wanted to place the church in the center of the lot; that was the trouble; by placing it in the middle of the lot we would have been prevented from deriving, by lease or sale, any revenue from any portion of the property; it was one of the reasons why the building of the church has been delayed; the archbishop did not want to get at loggerheads with the congregation; some wanted it in the center of the square — wanted to build a great cathedral.

Q. This church, St. Patrick's church, is the church that is to occupy the new church building?

A. Yes, sir.

Q. The congregation, I mean, that is to occupy the new church building?

A. Yes, sir.

Q. Do you call that a cathedral?

A. No; St. Patrick's church.

Q. The new building which you are now building fronts on 10th St.?

36 A. Yes, sir.

Q. Is there any vacant ground left about there now?

A. Yes, sir.

Q. How much?

A. About 35 feet.

Q. Right in the rear of the church?

A. Right at the side and some in the rear, too.

Q. On the south side?

A. Yes, sir; and some in the rear.

Q. What lots; do you remember the number of the lots upon which that stands?

WITNESS: Original lots?

COUNSEL: Yes, sir.

A. In the rear of lots 5, 6, 7, 8, and 9.

Q. And the church stands on what?

A. Stands on the rear of these original lots?

Q. Where does that church front?

A. On 10th street.

Q. Running half-way down G street?

A. Half-way the square.

Q. Then originally there were none of these lots fronting on 10th street?

A. 9 fronts on 10th street and 8 on the corner.

Q. And in the interim the congregation worship in Carroll Hall?

A. Yes, sir; on G street.

37 Q. That fronts on G street?

A. Yes, sir.

Q. Is there any vacant ground now along or about Carroll Hall?

A. There is open ground, five or six feet in width, on each side for ventilation, which runs down 113 feet and some inches to the 30-foot alley.

Q. You have retained, then, as much vacant ground as you now estimate useful for the purpose of your new church?

A. Yes, sir; I used as little ground as possible, so as to utilize as much as possible the vacant ground to pay off the church debt to be incurred in building.

Q. And the rest you make a source of revenue to the church while leasing it?

A. Yes, sir.

Q. This property on F street that has been built upon—what is the length of the lease?

A. Twenty-five years.

Q. Then the whole property reverts to the church?

A. Yes, to the archbishop for the use of St. Patrick's congregation.

38 Q. It seems to be a canon or institute of your church that all this property is vested in the archbishop?

A. Yes, sir; on some officer of the church, either the archbishop or bishop; in some dioceses there are different regulations; they have trustees—that is, a bishop with one or two laymen or the pastor from the corporation; in Maryland the archbishop is a body corporate.

Q. Created by the Legislature?

A. Yes, sir.

Q. And that at a time when the District of Columbia was a part of Maryland?

A. No, sir; formed within the last ten or fifteen years, perhaps, but he has held all the property of the church anyhow.

J. A. WALTER,
Pastor of St. Patrick's Church.

Subscribed and sworn to before me, this the 7th day of January, 1884.

EDWIN FORREST,
Examiner in Chancery.

I, Edwin Forrest, an examiner in chancery, do hereby certify that the foregoing deposition was duly taken down by me (pursu-
39 ant to agreement of counsel) and reduced to writing in the presence of and from the statements of the said witness, J. A. Walter, and the said deposition was afterwards read over by the said witness in my presence, and duly subscribed to by him before me. I further certify that I am not of counsel for either of the parties to this cause, or in any manner interested therein.

EDWIN FORREST.
Examiner in Chancery.

Fee, $5. Paid by complainant.

40 *Stipulation to Admit Deed. Filed Jan'y* 18, 1884.

In the Supreme Court of the District of Columbia.

JAMES GIBBONS
vs.
THE DISTRICT OF COLUMBIA. } Eq. No. 8412. Doc. 22.

It is hereby stipulated and agreed by and between counsel that the certified copy of the deed of conveyance from Anthony Caffray to the Rev. John Carroll, recorded in liber L. No. 11, folio 182, one of the land records of the District of Columbia, filed herewith and marked complainant's "Exhibit A," shall be filed in this cause and used in evidence, so far as the same may be competent and pertinent, as if said deed had been made a part of complainant's bill of complaint, and shall have the same force and effect as the original deed of which said exhibit is a copy.

G. E. HAMILTON,
Att'y for Complainant.
RIDDLE,
Att'y for Def't.

41 DEED, "EXHIBIT A," TO COMPLAINANT'S BILL.

Copy. Liber L, No. 11, folio 182, *et seq.* Filed Jan. 18, 1884, R. J. Meigs, Clerk.

Anthony Caffray to Right Rev'd John Carroll, Bishop of Baltimore:

At the request of Bishop Carroll the following deed was recorded the tenth day of September, eighteen hundred and four:

This indenture, made the fourth day of September, in the year eighteen hundred and four, between Anthony Caffray, D. D., of the city of Washington, of the one part, and the Right Rev'd John Carroll, Bishop of Baltimore, of the other part—

Witnesseth, that the said Anthony Caffray, for and in consideration of the sum of one dollar to him in hand paid before the ensealing and delivery of these presents, the receipt whereof the said Anthony Caffray doth hereby acknowledge and confess, and from every part and parcel thereof doth acquit, exonerate, & discharge the said Right Rev'd John Carroll, his heirs, executors, & administrators, hath given, granted, bargained, and sold, and by these

presents doth give, grant, bargain, sell, & confirm unto the said Right Rev'd John Carroll, for the use of the Roman Catholic congregation worshipping in the place called St. Patrick's church,
42 in the city of Washington, all those lots of ground in said city which are numbered five, six, and seven, in square three hundred and seventy-six, viz: Lot numbered five, containing fifty-six feet eight inches and one-half in front and one hundred and thirteen feet eight inches and one-half in depth; lot numbered six, containing the same dimensions, and lot numbered seven, containing fifty-six feet six inches & one-half in front and ninety-two feet ten inches in depth, together with all and singular the improvements, advantages, commodities, and appurtenances thereunto belonging, to have and to hold the aforesaid lots, with all & singular the appurtenances thereunto belonging to him, the said Right Rev'd John Carroll, his heirs and assigns, for the use of said Roman Catholic congregation, forever, and to their proper use & behoof, and no other use, intent, or purpose whatever, and the said Anthony Caffray, for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said Right Rev'd John
43 Carroll, his heirs, *or* and assigns, that the said Anthony Caffray shall and will warrant and defend the lots of ground hereby sold as well against the claim of any person or persons claiming by, from, or under him, as also against the claims or demands of all persons whatever.

In witness whereof the said Anthony Caffray hath hereunto set his hand and affixed his seal the day and year before written.

ANTHO-Y CAFFRAY.

Sealed & delivered in presence of—
HEN. WHETCROFT.
THOMAS MUNROE.

DISTRICT OF COLUMBIA, *City of Washington:*

Be it remembered that on the fourth day of September, in the year one thousand eight hundred and four, before me, the subscriber, superintendant of the city of Washington, personally appeared Anthony Caffray, the grantor named in the foregoing instrument of writing, and acknowledged the same to be his act and
44 deed. & that the lots of ground thereby intended to be conveyed — all the right of the therein named John Carroll for the uses and upon the trusts in the said instrument declared.

THOMAS MUNROE.

Endorsed: Compl't's "Exhibit A." Filed May 18, 1884.

Certificate of Registration. *Jan'y* 11, 1884.

"This is to certify that the within is a true and verified copy of a deed as recorded in Liber L, No. 11, folio 182, *et seq.*, one of the land records for the District of Columbia.

Washington, D. C.

GEO. F. SCHAYER,
Dep. Recorder.

Order for Hearing of Cause. March 13, 1884.

Hearing in general term in the first instance ordered (verbal).
By MACARTHUR, *Justice.*

Proceedings in General Term.

THURSDAY, *January* 22, 1885.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justices MacArthur and James.

45 *Decree in General Term. Filed Jan.* 22, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 22d day of January, A. D. 1885. Equity

JAMES GIBBONS, Complainant,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } No. 8417.

This cause coming on to be heard in the general term, and being argued by counsel, it is, upon consideration thereof, ordered, adjudged, and decreed by the court, this 22d day of January, A. D. 1885, that the complainant's bill be, and it is hereby, dismissed with costs; and from this decree the complainant prays an appeal to the Supreme Court of the United States, which is allowed, and the penalty of the appeal bond is fixed at five hundred dollars.

By the court:

D. K. CARTTER,
Chief Justice.

46 In the Supreme Court of the District of Columbia. Equity.

JAMES GIBBONS, Complainant,
vs.
THE DISTRICT OF COLUMBIA, Defendant. } No. 8417.

Filed Jan. 31, 1885. R. J. Meigs, clerk.

Know all men by these presents that we, the undersigned, James Gibbons, as principal, and Thomas J. Myers, as surety, are held and firmly bound unto The District of Columbia in the sum of five hundred dollars, to which sum, to be paid to the said District of Columbia or its lawful attorney, we bind ourselves, our heirs, executors, and administrators, well and truly, by these presents.

Sealed with our seals and dated at the city of Washington, in the District of Columbia, this twenty-sixth day of January, A. D. 1885.

Whereas in a suit pending in the supreme court of the District of Columbia, between the said James Gibbons as complainant and The District of Columbia as defendant, the said James Gibbons has obtained an appeal to the Supreme Court of the United States from a decree in said suit pronounced against him:

Now, the condition of this obligation is such that if the said James Gibbons shall prosecute his said appeal to effect, or
47 failing so to do shall pay or make good to the said District of Columbia all costs and damages that may accrue to it by

reason of the said appeal, then this obligation shall be void; otherwise, the same shall remain in full force and effect.

JAMES GIBBONS, [SEAL.]
By JACOB A. WALTER.
THOS. J. MYERS. [SEAL.]

Witness:
PATRICK JORDAN.

Approved this 31st day of Jan'y, A. D. 1885.

D. K. CARTTER,
Ch'f Just.

AUTHENTICATION OF RECORD.

48 *Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 15th day of October, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 15th day of Oct'r, 1885.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, —— ———, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 15th day of October, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: District of Columbia, supreme court. No. 1143. James Gibbons, appellant, *vs.* The District of Columbia. Filed October 19, 1885.

116-404

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1143.

JAMES GIBBONS, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Supreme Court of the District of Columbia.

MOTION TO DISMISS THE APPEAL.

And now comes the defendant and shows here to the Court that the amount in dispute between the parties to this suit is insufficient to give this Court appellate jurisdiction thereof.

He moves that said appeal be dismissed.

A. G. RIDDLE,
Attorney D. C.

In support of the above motion the attorney for the District refers the Court to the plaintiff's statement of the amount in dispute, on page 3 of the printed record.

Respectfully submitted,

A. G. RIDDLE,
Attorney D. C.

116-404

RECEIVED
DEC 19 1885
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1143.

JAMES GIBBONS, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANT.

M. F. MORRIS,
For Appellant.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1143.

JAMES GIBBONS, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANT.

I.

STATEMENT OF CASE.

This suit was brought to vacate certain tax assessments and tax sales, claimed by the complainant, the appellant here, to have been illegal and to constitute, however, a cloud upon the complainant's title.

Lots numbered from 36 to 46, both inclusive, in a subdivision of square No. 376, in the city of Washington, D. C., being the same as original lots 5, 6, and 7 in the original division of the square, were conveyed, in 1804, by one Anthony Caffray to Right Rev. John Carroll, Roman Catholic bishop of Baltimore, "in trust for the use of the congregation worshiping in the place called St. Patrick's church, in

the city of Washington." The church edifice was constructed upon these lots, and so stood until 1870, when, as the building was then pronounced unsafe, the congregation removed temporarily to a school-house designated as Carroll Hall, within the same inclosure, but fronting upon another street. The church inclosure, in fact, included in those days about one-half of the square, fronting upon three streets, F, Tenth, and G streets.

The old church building was torn down and removed in 1872, and shortly afterwards the new structure, which is now St. Patrick's church, was begun upon the back part of these lots and upon certain other lots fronting on Tenth street, and the church edifice itself now fronts upon Tenth street, instead of F street, as the old building did. This new edifice was incomplete at the time of the filing of the bill in this case, but was finished and occupied soon afterwards.

Between 1870 and 1880 no use was made of the lots in question, except such as was appurtenant to Carroll Hall as a school-house and as a temporary church, and such use as was needed for the construction upon parts thereof of the new church building. But in 1880, in view of the general growth of the city of Washington, it was determined to curtail the amount of property to be held and used in immediate connection with the church, and to sell or lease the front part of these lots. To effect such sale or lease, however, it was necessary to divest the lots of the trust imposed upon them by the Caffray deed of 1804. Accordingly the appellant here, who is the successor of Bishop Carroll and in whom the title had become vested by divers mesne conveyances, filed a bill in equity in the Supreme Court of the District of Columbia, and procured a decree authorizing him to sell or dispose of so much of the property as was not then deemed necessary for church purposes, and to apply the proceeds to the construction and completion of the new church. This deed was made in 1881. The parts of the lots fronting on F street were subsequently leased for a term of years; and since 1880, when it was determined to abandon

them for immediate church purposes, taxes have been paid upon them, and their liability for taxation has not been questioned.

For 70 years, from 1804 to 1874, the whole half square within the inclosure already mentioned had been exempted from taxation—first, by the ordinances of the city of Washington, and subsequently under the act of Congress of June 17, 1870, (16 Stat., p. 153; Rev. Stat. U. S. for Dist. of Columbia, sec. 147). In 1874, under what was erroneously supposed to be the purpose and intent of an act of Congress of June 20, 1874 (18 Stat., part 3, p. 117), the authorities of the District of Columbia proceeded to assess all church property in the District, and this with all other church property. This assessment was kept up during subsequent years, and several sales were had of the property for non-payment of the taxes so assessed. No notice of any kind was given by the authorities of their intention to convert these lots from non-assessible to assessible property.

The controversy here is as to the liability of the lots in question to taxation for the years from June 30, 1874, to June 30, 1880

The court below held that the property was liable to taxation during those years, and accordingly it dismissed the complainant's bill. From the decree of dismissal the complainant appeals.

II.

1. The court below erred in holding that the property in question was not used during the time specified for church purposes, and as appurtenant to St. Patrick's church.

2. The court below erred in holding that the property in question was subject to taxation during the time specified.

3. The court below erred in holding that, even if the whole of the property in question was not used for church purposes, during the time specified, it was not the duty of the District

to segregate that which was so used from that which was not so used, and only to tax the latter.

4. The court below erred in refusing to adjudge, as requested on behalf of the complainant, that the several acts of Congress under which taxes were levied on said property during the time specified were repugnant to the provisions of the Constitution of the United States.

5. The court below erred in dismissing the complainant's bill.

III.

BRIEF OF ARGUMENT.

1.

There is a motion by the appellee to dismiss the appeal upon the alleged ground that the amount in controversy is less than the amount required to give jurisdiction to this court; and reference is made to the complainant's bill (Record, p. 3) as showing the amount in controversy to be only $3,837.39.

We are at a loss to understand the appellee's position on this point. From the passage of the complainant's bill which is cited it is plain that the sum of $3,837.39 is only the *principal* sum of the taxes assessed upon this property; and it is specifically and explicitly stated that this sum does not include the interest on the several assessments which had run on for the several years at the rate of ten per centum per annum. It requires no difficult calculation to show that, at the time the bill was filed (January 9, 1883), the principal and interest in arrears, from which relief was sought, amounted to $5,939.28 or upwards. The appellee's own showing (Record, p 7, and 7 to 10) makes the amount about $2,000 more, or about $8,000. And at the time of the decree (January 22, 1885) it was still larger; and it is the amount at the time of decree that determines the jurisdiction.

No citation of authorities would seem to be necessary on this point. It was so decided in Bank *vs.* Daniel (12 Peters, 32). and in Merrill *vs.* Pelly (16 Wallace, 338), and over and over again by this Court.

The bill was filed to declare invalid a claim of the appellee, amounting, at the time the suit was instituted, to nearly $6,000, or, according to the showing of the appellee, to nearly $8,000. And even this, after all, was not the value of the matter in controversy. This value was the value of the property itself, which had been sold for taxes and bought in by the District, and the purpose of the bill was to vacate these sales.

Plainly, there can be no question of jurisdictional amount here. It is too plain for argument that the amount in controversy exceeds $5,000.

2.

It is possible that objection may be made that the appellant's case has been proved by only one witness. No such objection was made in the court below. But as it does not appear from the record what questions were made in the court below, it is deemed best to anticipate even this one. The answer to it is that the defendant's answer is only a pleading and not testimony. It is not sworn to and not even signed, while the complainant's bill is supported by affidavit. Under these circumstances, of course, one witness is sufficient, and his testimony is the only testimony in the case.

3.

The act of Congress of June 17, 1870, under which the appellant claims immunity from taxation for the property in question, and which constitutes the charter of exemption for all church and school property in the District of Columbia is as follows:

"All churches and school-houses, and all buildings, grounds

and property appurtenant thereto and used in connection therewith in the District of Columbia, and any cemetery therein held and owned by a religious society having a regular and known place of worship, or by any incorporated association, shall be exempt from any and all taxes and assessments, national or municipal."

16 Statutes, p. 153.
Rev. Stat. for D. C., Sec. 147.

This act, of course, was intended to be general and permanent, and not to be affected by the temporary or annual taxing acts thereafter to be passed. Hence it is not to be presumed to be repealed by any subsequent act providing for taxation for any single year, unless such repeal is provided for by express words or by necessary implication. It is submitted that no subsequent act does anything of the kind. But it is claimed that this was done by the act of June 20, 1874 (18 Statutes, part 3, p. 117), which reads as follows:

"That for the support of the government of the District of Columbia and maintaining the credit thereof for the fiscal year ending June 30, 1875, there shall be levied upon all real estate in said District, except that belonging to the United States and to the District of Columbia, *and that used for educational and charitable purposes*, the following taxes, namely: Upon all such real estate in the city of Washington, three dollars on each one hundred dollars of the present assessed value thereof; upon all such real estate in the city of Georgetown, two dollars and fifty cents on each one hundred dollars of the present assessed value thereof, and upon all such real estate in the District of Columbia outside of the cities of Washington and Georgetown, two dollars on each one hundred dollars of the present assessed value thereof." * * *

The only exemption here made, besides governmental and municipal property, is for real estate "*used for educational and charitable purposes.*" Thereupon the District authorities, construing that "*charitable purposes*" did not mean "*churches*" and "*property used in connection therewith,*" as exempted by the general law of 1870, proceeded, for the first time in the

history of the District of Columbia, to assess and tax all churches and all church property. But their construction was positively determined to be wrong; for, besides the fact that the expression "*charitable purposes*" is identical in meaning with that of "*charitable uses*" in the well-known statute of Elizabeth, which has been uniformly adjudged to embrace churches within its scope, and besides the fact that there is no reason to presume that Congress intended to repeal the act of 1870 in regard to churches any more than in regard to school-houses, Congress itself has, by a subsequent act, specifically explained its meaning; and its construction, of course, is binding upon its creature, the District of Columbia. By an act of June 21, 1879 (21 Statutes, p. 23), Congress said:

"That so much of an act of Congress entitled 'An act for the government of the District of Columbia and for other purposes,' approved June 20, 1874, as was construed to authorize the Commissioners of the District to set aside former exemptions from taxation of church property which was actually held and used for the purpose of divine worship, and to enforce a tax upon such property, be, and is hereby, repealed; and the title to such property is hereby declared to vest in the trustees, or such other persons as held the title to the same at the time of the passage of the act of 1874, or their successors in interest, notwithstanding the sale of such property for non-payment of taxes.

"SEC. 2. That the Commissioners of the District of Columbia be, and they are hereby, authorized and required to refund to the trustees or other proper officers of such church or churches as have paid the taxes assessed against them under the act of June 20, 1874, such sums respectively as were paid by each upon property actually held and used for the purpose of divine worship."

This disposes summarily of the claim of the District to tax churches and church property under its erroneous construction of the act of 1874.

The next act of Congress, in the order of time, imposing taxes for the support of the District of Columbia, is that of

March 5, 1875 (18 Statutes, part 3, p. 503). It provides as follows:

"SEC. 1. Be it enacted, &c, That for the support of the government of the District of Columbia for the fiscal year ending June 30, 1876, there shall be levied upon all real and personal property in said District, excepting only the real and personal property of the United States and that hereinafter stated, a tax of one dollar and fifty cents on each one hundred dollars.

* * * * * * *

"SEC. 8. That the property exempt from taxation under this act shall be the following and no other: 1st. Houses for the reformation of offenders, almshouses, buildings devoted to art or belonging to institutions of purely public charity; church buildings, and grounds actually occupied by such buildings; houses to improve the condition of seamen or soldiers; free public library buildings and cemeteries. 2d. The lands or grounds appurtenant to any said house or building, so far as reasonably needed and actually used for the convenient enjoyment of any said house or building for its legitimate purpose and no other; but if any portion of any said building, house, grounds, or cemetery so in terms excepted is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said building or grounds. 3d. Such property as is now exempt from taxation by the laws of the United States. 4th. &c., &c., &c."

This act, it will be perceived, does not attempt to restrict or interfere with the general act of 1870, but, on the contrary, reaffirms it, and attempts in a measure to define it.

The next act in order is that of July 12, 1876 (19 Stat., 85), which imposes a tax of one dollar and fifty cents on the one hundred dollars, and in regard to exemptions is identical in terms with the act of 1875, which it repeats almost word for word.

Next, by an act of March 3, 1877 (19 Stat., 396), which by its terms remains the permanent tax law of the District of Columbia, it was provided:

"SEC. 1. That for the support of the government of the District of Columbia for the fiscal year ending June 30, 1878, there shall be levied upon all lands outside of the cities of Washington and Georgetown held and used solely for agricultural purposes a tax of one dollar and twenty-five cents on each one hundred dollars of the assessed value thereof, and upon all other real and personal property in said District, excepting only the real and personal property of the United States and that hereinafter stated, a tax of one dollar and fifty cents on each one hundred dollars of the assessed value thereof.

* * * * * * *

"SEC. 8. (Provides for exemptions, and the exemptions are in the precise terms of the act of 1876.)

* * * * * * *

"SEC. 18. That this act shall remain in force as the tax law of the District of Columbia for each subsequent year after June 30, 1878, until repealed."

It is plain that by all these statutes churches and church property are exempted from taxation, and it only remains to be determined from the record whether the property in question here was such church property as the legislative power intended to exempt.

4.

A church and a school-house are contained within the same inclosure. The whole inclosure had been exempted from taxation for seventy years as church property. The church edifice has become dilapidated, and it becomes necessary to tear it down and rebuild it. During the interval of reconstruction the congregation worships in the school-house. No part of the inclosure is used in the meantime for any business purpose, for any purpose of income or profit, or for any purpose whatever other than church purposes. Does the part of the inclosure formerly occupied by the church building become subject to taxation because it has been left vacant, and because the new building occupies only a part of it? And does it follow that from 1874 to 1880 a part of

this property was not "reasonably needed for the convenient enjoyment" of the church building because in 1880 it was resolved to curtail the inclosure and devote the part in question to business purposes? Those are the questions presented here by the record.

That the lots in question were "reasonably needed for the convenient enjoyment" of the church building must be presumed, inasmuch as for seventy years they had been so used, and admitted by the proper municipal authorities to have been a reasonable appurtenance of the church. And in this connection it must be remembered that what might be reasonable in a small or sparsely settled town or village, in which a whole block or square surrounding the church would not be an unreasonably large inclosure, would be regarded differently in a large or populous city in which ground had become immensely valuable. Therefore, if in 1880 the congregation of this church concluded that they could dispose of some of the land appurtenant to it, it does not at all follow that there was too much of such land appurtenant thereto before that year. This is too plain a proposition to need elaboration by argument.

Now, does the temporary cessation of religious worship upon the lots in question divest them of the character of church property during the process of demolition and reconstruction? The inclosure, it must be remembered, is not changed. The curtilage remains the same. Another building within that curtilage, itself exempt from taxation as a school-house, is temporarily used for religious worship. Assuredly it would be a most harsh and illiberal construction to hold that the exemption is suspended during this brief period of transition.

It was evidently the intention of Congress to define what should be regarded as "church property" in this connection when, in the acts before cited, it said: "If any portion of any such building, house, grounds, or cemetery so in terms exempted is used to secure a rent or income, or for any business purpose, such portion of the same shall be

taxed." In other words, it was the legislative purpose that property appurtenant to the church and within the church inclosure must be regarded as exempted property, unless it was used for business purposes, or to secure an income or revenue. And as Congress has not attempted specifically to restrict the amount of property that may so be held, it is evident that any inclosure will be so exempted which has been commonly regarded as not an unreasonable inclosure. That the inclosure in the present case was not unreasonable is sufficiently evidenced by the action of the municipal authorities for seventy years.

In this connection it must also be remembered that not before 1881 did this property become divested of the religious trust upon it, and become available for business purposes. Until 1881 it was necessarily used for church purposes, and could not legally have been used for anything else, and until 1874 the municipality acquiesced in the propriety of that use. Now in 1874 nothing whatever occurred to change the status of things, except the erroneous construction put upon the act of Congress of that year by the District authorities.

See Parker *vs.* Redfield, 10 Conn., 491.
New Haven *vs.* Sheffield, 30 Conn., 160.
Byington *vs.* Wood, 12 Iowa, 479.
Hoboken *vs.* Bergen, 43 N. J. L., 146.
Mulroy *vs.* Churchman, 52 Iowa, 238.
Appeal Tax Court *vs.* St. Peters, 50 Md., 321.
Mass. Hospital *vs.* Somerville, 101 Mass., 319.

5.

The new church building stands on the rear part of these lots (Record, 14, 15). This part certainly ought not to have been taxed, even if the front part, subsequently devoted to business purposes, was not actually needed for the purposes of the church. But no attempt seems to have been made by

the municipal authorities in the present instance to discriminate between the parts needed and those not needed, and to assess the tax accordingly. The tax being void in part is void *in toto*, as there is no means of separating the legal from the illegal part.

6.

An assessment once made cannot be increased without some notice to the owner of the property.

Cooley on Taxation, pages 541, 547.
Clegham *vs.* Postlewaite, 43 Ill., 428.
Darling *vs.* Gunn, 50 Ill., 424.

And a parity of reasoning requires that property exempted from taxation shall not be assessed for taxes without some notice to the owner; and the records of the District of Columbia or of its tax assessors are not such notice as the appellee in its answer pretends. This property was exempted until 1874. It is not shown that anything occurred in 1874 to justify a change; and the appellant was certainly entitled to some notice that a change was contemplated. No notice whatever was given him (Record, p. 13). For this reason alone the assessment was illegal and void.

7.

A more serious question is that of the constitutionality of the acts of Congress under which it is sought to uphold the assessments against the property in question.

At least two of these acts, those of 1874 and 1877, are in plain violation of the Constitution of the United States and of the dictates of common justice.

The Constitution, article 1, section 8, provides that all taxation shall be *uniform* throughout the Union; and it has been decided in the case of Loughborough *vs.* Blake (5 Wheaton, 317) that this provision is as applicable to the District of Columbia as to any other part of the Union. It is a

plain, palpable violation of this requirement of the fundamental law of the land to impose, as these statutes specifically propose to do, a *different* rate of taxation *for the same common purpose upon the same class of property*, because it happens to be used for different purposes, or are situated in a different locality, to say that real estate in Washington city shall pay one rate, real estate in Georgetown another rate, and real estate in the county of Washington a third rate, notwithstanding that all the taxes go into one common fund, are used for one common purpose, and are in no way whatever apportioned in accordance with these territorial subdivisions. As well might it be enacted that property used for raising wheat should bear one rate and property used for raising corn another rate; or that houses with green shutters should pay one tax and houses with white shutters another and a different tax; or that lots of ground in one square should pay one rate and all other lots a different rate. It will easily be seen from this that a few persons, or even one person, might be made to pay all taxes, and all other persons could go free. If the power of Congress can extend to do this, then there is no constitutional protection, and no safeguard of equal laws and equal justice for the District of Columbia.

Cooley on Taxation, 128, 129.

8.

It is respectfully submitted—

1st. That the property in question was church property, such as was intended to be exempted, and was in fact exempted from taxation by the act of June 17, 1870.

2d. That there is no warrant for construing that any subsequent act of Congress repealed that of 1870.

3d. That there was no change in the character of this

property between 1874 and 1880, such as to justify a refusal to continue the exemption.

4th. That if it was not exempt, and was in fact subject to taxation, the acts authorizing taxes against it were unconstitutional, null, and void.

Therefore the decree below should be reversed.

M. F. Morris,
For Appellant.

116-404

Office Supreme Court U. S.
FILED
DEC 19 1885
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1143.

ARCHBISHOP GIBBONS

vs.

THE DISTRICT OF COLUMBIA.

Appeal from the Supreme Court of the District of Columbia by Plaintiff.

BRIEF FOR THE DISTRICT.

A. G. RIDDLE,
For the District of Columbia.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1143.

ARCHBISHOP GIBBONS

vs.

THE DISTRICT OF COLUMBIA.

Appeal from the Supreme Court of the District of Columbia by Plaintiff.

BRIEF FOR THE DISTRICT. A. G. RIDDLE.

THE CASE BY THE BILL.

The plaintiff and appellant says he is the Roman Catholic Archbishop of Baltimore, and as such holds the title to certain lots of land, part of square 376, in Washington, known as lots 36 to 46 of subdivision of original lots 5, 6, and 7, in trust forever for the use of the congregation of St. Patrick's Church. Said property has been so held since 1804.

Originally St. Patrick's Church stood on said lots, and the same were enclosed within a paling, and used for the church as church grounds. In 1870 the old church edifice was abandoned, and the congregation worshiped in Carroll Hall, with which this property was connected for church and school purposes.

These lots front F street northwest; one fronts Tenth street. Carroll Hall fronts G street, on the north side of said square.

In 1881 the equity court authorized the archbishop to rent this property for the use of the church (the rents to go to its use), and said lots were rented, since which the taxes were paid.

Said property was never assessed for taxation till 1874 (1875 the bill alleges), and thence on—1875, 1876, 1877, 1878, 1879—and sold for non-payment of taxes. Meantime a new church was built on the rear of these lots, used now for worship.

The bill declares that under the laws of the District this property for these years was exempt from taxation, and prays relief from the sales, assessment, &c.

The bill is fully answered. That the property was appurtenant and used for church purposes is denied. It is also declared that the property was liable to taxation for said years and the law duly observed by the District to enforce the same.

PROVISIONS OF LAW.

It is to be remembered that until 1874 the general subject of taxation was by Congress remitted to the corporations of the District until the cessation of the District government created by the act of February 21, 1871, save, perhaps, the act of June 17, 1870, which exempted churches and schoolhouses, and all buildings, grounds, and property appurtenant thereto and connected therewith, from taxation.

Rev. Stats. D. C., 16, sec. 147.

By the act of June 20, 1874, repealing the act of February 21, 1871, above, a levy of $3 on each $100 was declared "upon *all* real estate" in the city of Washington for the year ending with June, 1875. This exempted only property used for charitable and educational purposes.

18 Stats., 116, sec. 4.

See Welch's case, 97 U. S., 541.

For each of the years 1875, 1876, and 1877 Congress passed an annual tax law for the District. The last was made perpetual, and is the present tax law of the District. To these reference will here be had.

The language of the act of March 3, 1875, may be a little ambiguous. No construction of it can help the archbishop's claim. It mentions by name all the property exempted by it and expressly excludes all other. In this enumeration, under "*First*," are "buildings devoted to art or belonging to institutions of purely public charity; church buildings and grounds actually occupied by such buildings; houses," &c.; under "*Secondly*," "the lands or grounds appurtenant to any said house or building, so far as reasonably needed and actually used," &c.

18 Stats., sec. 8, p. 503.

It matters little whether this last provision applies to churches or not under the plaintiff's evidence in the case.

Section 8 of the act of July 12, 1876, exempts churches thus: "And churches and grounds actually occupied by such buildings." If the language later employed in this section is supposed to refer to churches, as I am sure it does not (nor can it in the former act), it then imposes upon the District officers to see to it that the grounds and buildings be limited to the special purpose of erection and occupany.

19 Stats., 85.

The eighth section of the existing law merely names "churches" as of the properties exempted; nor is there a word in the after part of it which can aid to enlarge the exemption.

19 Stats., p. 399.

These three, the eighth section of each act, are substantially the same.

The Evidence.

Father Walter, pastor of St. Patrick's since April, 1860, is the sole witness. He was called for the plaintiff.

Record, p. 12: He says the property was all in one lot, inclosed with the church—church property. The old church was pulled down in 1872. The congregation left it in 1870. The property was used for church purposes, after as before, continuously till 1879. The F-street property (that claimed as exempt fronting on F street) is leased for twenty-five years from June 11, 1880.

P. 13: Worship was transferred to Carroll Hall, on G street. This property is in the rear of Carroll Hall. He paid taxes on it since November, 1880.

P. 14: On cross-examination he explains that when he says this property was used as church property he means it was vacant property, included in an inclosure with St. Patrick's Church; that as soon as the property (claimed as exempt) was in a situation to be leased it was leased.

"Question. So that it was not necessary for the enjoyment of the church that it should remain vacant?
"Answer. No, sir."

He said further that the new St. Patrick's Church fronts Tenth street, with vacant ground about it.

P. 15: He said there is vacant ground each side of Carroll Hall five or six feet in width, for ventilation, which runs back (south) 113 feet to a 30-foot alley.

Case Submitted.

a. It is to be borne in mind that during the years for which exemption is claimed St. Patrick's Church occupied Carroll Hall, on G street, already surrounded by vacant ground deemed sufficient for ventilation.

b. That the property claimed as exempt fronts on F and Tenth streets, and in no way appurtenant to Carroll Hall, from which it is separated by a 30-foot alley.

c. Finally, the property was leased because its use was not necessary for the enjoyment of even the new church in its neighborhood.

I submit that the plaintiff fails to bring this property within the purview of any provision of exemption from tax applicable to the several years for which it was assessed.

Very respectfully,

A. G. RIDDLE.

116-408

SUPREME COURT OF THE UNITED STATES

No. ——.

OCTOBER TERM, 1885.

FLETCHER, WESSENBERG & CO., PLAINTIFFS IN ERROR,

versus

HAMLET, BLISS & ELLIOTT, DEFENDANTS IN ERROR.

Defendants in error, Hamlet Bliss & Elliott, through their counsel, B. R. Forman, move the Court to advance this cause and to dismiss, or affirm, under the 32 Rule, § 4, this being a writ of error from a judgment of the United States Circuit Court remanding the cause to the State Court, whence it had been illegally removed. The questions of law are so well settled as to need no argument.

Respectfully,

B. R. FORMAN,

Of Counsel.

STATEMENT OF THE CASE.

The terms of the Civil District Court of New Orleans, Louisiana, begin on first Monday of November, and end on the third day of the following July. See Rule III, Civil District Court, Act 1869, p. 13. Louisiana Revised Statutes, § 1928.

Hamlet, Bliss & Elliott brought this suit in the State District Court against Fletcher Wessenberg & Co. on 17 March, 1883.

The defendant firm was then in existence, doing business in New Orleans, and was brought into Court by citation served on William Wessenberg, a member of the firm. This citation brought the firm and all of its members into Court. Louisiana Code of Practice, Art. 198, last paragraph, directing how citation must be served, reads:

"In suits against any commercial association trading under a title, or as a firm, on any of the partners in person, or at their store or counting house, by delivery to their clerk or agent."

It is settled law in Louisiana that during the existence of a partnership, service of citation on one member is good against all. Gaiennie vs. Akin, 17 L. 42; Kearney vs. Fenner, 14 A. 870; Montague vs. Weil, 30 A. 50; Hefferman vs. Brenham, 1 A. 146. Per contra after dissolution of firm each partner must be cited separately. Brashear vs. Dwight, 2 A. 403.

On the 6th day of April, 1883, Fletcher, Wessenberg & Co. filed a demurrer and a plea of *res adjudicata*, going to the whole case. The State District Court decided this demurrer and plea in their favor on 17 day of April, 1883, and Hamlet, Bliss & Elliott appealed to the Supreme Court of Louisiana, which Court reversed the State District Court and overruled the demurrer and plea in May, 1884, and remanded the cause to the State Court of original jurisdiction. 36 La. An. 551.

It is true that after this judgment of the Supreme Court of Louisiana, which was rendered contradictorily with all of the plaintiffs and defendants, and by which they were all bound, one of the Fletchers, already in court as above stated, was, out of abundant caution, served with a copy of the original petition and citation, and it is upon this fact alone that plaintiffs in error rely—but this can not avail them, because: 1st. George F. Fletcher was already in court and had pleaded to the whole case, and judgment had been rendered at a preceding term. 2nd. When the petition for removal was made the firm of Fletcher, Wessenberg & Co. had been dissolved, and all the members of the firm did not join in the petition to remove. The firm was composed of Geo. Fletcher, John F. Fletcher and Wm. Wessenberg, and George Fletcher did not join in the petition to remove. The application to remove then came too late, in July 1885

It was not made at the first term at which the cause could have been tried.

18 Statutes, 471.

Babitt vs. Clark, 103 U. S. 606.

Pullman Palace Car Co. vs. Speck, 113 U. S. 87.

Gregory vs. Hartley, 113 U. S. 742.

There can be no removal after a hearing on demurrer.

Alley vs. Nott, 111 U. S. 472.

Scharf vs. Levy, 112 U. S. 711.

All of the defendants (plaintiffs in error) must join in the removal and remove the whole suit.

Chambers vs. Holland 11 Fed. Rep. 209.
Barney vs. Latham, 102 U. S. 205.
Blake vs. McKim, 103 U. S. 336.
Girardy vs. Moore, 3 Woods, p. 402.

The right of removal is given to plaintiffs or defendants collectively.

Louisville Railroad Co. vs. Ide, 114 U. S. 52.
Pirie vs. Tvedt, 115 U. S. 41.

These cases conclusively established the correctness of the judgment of the court below.

Respectfully submitted,

B. R. FORMAN,

Of Counsel for Hamlet, Bliss & Elliott.

NEW ORLEANS, LOUISIANA, 19 OCT., 1885.

To Messrs. E. H. Farrar and E. B. Krutschnitt, Attorneys for Fletcher, Wessenberg & Co.:

GENTLEMEN—Please take notice that in the case of Fletcher, Wessenberg & Co. vs. Hamlet, Bliss & Elliott, No. ——, October term, 1885, Supreme Court of the United States, I will submit to the Court the annexed motion to advance the cause and dismiss or affirm under the 32 Rule, three weeks after the service of this notice of the motion, say on the second Monday of November, 1885, or as soon thereafter as counsel can be heard on the brief annexed thereto.

Respectfully,

B. R. FORMAN,

Of Counsel for ~~Fletcher, Wessenberg & Co.~~ Hamlet, Bliss & Elliott

We acknowledge service of the foregoing notice of the motion to advance and dismiss or affirm—with copy of brief—in the above entitled cause.